Doc Code: AP.PRE.REQ

PRE-APPEAL BRIEF REQUEST FOR REVIEW

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR	**Docket Number (Optional)** 02530029AA

Application Number	Filed
10/668,260	09/24/2003

on _____

First Named Inventor
Y. Ooki

Signature _____

Typed or printed
name _____

Art Unit	Examiner
2144	G. Bengzon

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
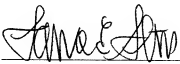   Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
   See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
   (Form PTO/SB/96)

☑ attorney or agent of record.
   Registration number   35,371

☐ attorney or agent acting under 37 CFR 1.34.
   Registration number if acting under 37 CFR 1.34 _____

_____
Signature

_____
Laurence E. Stein
Typed or printed name

_____
(703) 787-9400
Telephone number

_____
February 14, 2008
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☐   *Total of _____ forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:

Yasuomi Ooki et al.	Confirmation No. 7772
Serial No. 10/668,260	Group Art Unit: 2144
Filed: September 24, 2003	Examiner: Bengzon, Greg C.

For: INTERNET CONNECTION SYSTEM

Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

ATTACHMENT TO PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

This Pre-Appeal Brief Request for Review is filed with an accompanying Notice of Appeal. If any additional fees are required for entry or consideration of this Pre-Appeal Brief Request for Review, or the accompanying Notice of Appeal, the Commissioner is authorized to charge Attorney's Deposit Account 50-2041.

The Invention

All of the pending claims include, in various combinations with other various elements, a plurality of terminals, each terminal having a unique identifier, the terminals connected through various LAN base stations to a common gateway, with either the common gateway or a charging server arranged to record the quantity of data communicated by each terminal to the internet, and with either the gateway or the charging server arranged to generate a communication fee for each terminal, the fee based on the ratio of that terminal's quantity of data communicated to the internet to the total of the data communicated to the internet by all of the terminals.

An example embodying the above claim elements is an arrangement of four (4) personal computers (PCs) in, for example, a shared office building, each of the PCs connected to a shared firewall server belonging to the building proprietor. The firewall server is connected to the Internet. The business

proprietor pays an ISP such as, for example, Comcast, for an amount of bandwidth such as, for example, 100 Mbytes/sec. The four PCs belong, respectively, to Dave, Tom, Betty and Mary. Each is billed by the proprietor, at the end of each month, for his or her use of the proprietor's Internet access. The firewall server stores an address (e.g. MAC address) for each of the four users. The example firewall server includes processing hardware and a program implementing a recorder, or counter, that accumulates a count of the quantity of packets each terminal (i.e., each of Dave, Tom, Betty and Mary) communicates with the Internet over each month, and the total accumulated by all four terminals. The server implements a calculation, at the end of month billing time, of a fee for each of the four terminals, (i.e., each of Dave, Tom, Betty and Mary). As recited by the claims, the fee calculation is based on the ratio of the terminal's accumulated quantity of data communicated to the Internet over the month to the total accumulated quantity communicated by all four terminals over the month.

In an illustrative example operation, over the month of January 2008, Dave communicated 200 GBytes, Tom 50 GBytes, Betty 10 GBytes, and Mary 500 GBytes. These counts are maintained in the proprietor's firewall server. Their total for January 2008 is therefore 760 Mbytes. On, for example, February 1, 2008, the server generates a fee data, one for each of Dave, Tom, Betty and Mary. As recited by the claims, the server generates each fee data based on the ratio of the user's data communications to the total of the data communications. Therefore, in this example, Dave's bill is 200/760 * $100 ≈ $26, Tom's bill ≈ $7, Betty's bill ≈ $1, and Mary's bill is ≈ $66. Next, assume that over February 2008 Dave communicated 100 GBytes, Tom 30 GBytes, Betty 350 GBytes, and Mary 0 GBytes, and the server generates a new fee on March 1, 2008. Again, according to the claims, the fee is generated based on the ratio of the user's Internet communication to the total of the users' Internet communications. Therefore, the March 1, 2008 fee data are: Dave's bill is 100/480 * $100 ≈ $21, Toms bill is ≈ $6, Betty's bill is ≈ $73, and Mary's bill is $0. As claimed, each user's bill data is

based on his or her relative portion of the total recorded communication over the billing period. If, over a given month, each of the four communicates 1 MByte of data, each of the four pays $25. If, on the other hand, one user communicates data and others do not use the Internet, the one user pays $100, and others pay $0. The prior art suggests nothing of such an arrangement.

Errors and Omissions

The rejection of claims 1,9-10,12-15, and 17 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2003/020049 ("Moskowitz") in view of U.S. Patent No. 5,987,430 ("Van Horne") is in error. The rejection of claims 7, 11, 16 as being unpatentable over Moskowitz in view of Van Horne, in view of U.S. Patent Publication No. 2006/0239254 ("Short"), in view of the Office Action's allegation of "what is well known in the art" is in error.

Applicant respectfully submits the rejections omit proper consideration of the claim language. Applicant submits the rejection alleges Moskowitz as disclosing subject matter that, in fact, is not found in that reference. Applicant disputes the Examiner's allegations of certain knowledge being extant in the art. Applicant further submits the Examiner's allegations of what is known in the art, even if shown extant, have no pertinence to Moskowitz's system or methods, or their objectives, functions, purposes, or principles of operation.

Regarding claim language, all of the base claims recite: "record a communication band usage for each of the terminals reflecting a quantity of data," and "generat[ing] a communication fee data, unique to each terminal, based on the ratio of" that terminal's recorded band usage, i.e., recorded quantity of data communications, to the total recorded band usage, i.e., recorded quantity of data communicated by all of the terminals.

The claim language of: "record … a quantity of data," "based on the ratio" and "total" has plain, unambiguous meaning, and nothing other than that plain meaning is shown or supported by the specification.

Moskowitz discloses nothing within the meaning of "record a communication band usage for each of the terminals reflecting a quantity of

data." Moskowitz discloses nothing within the meaning of recording a total communication bandwidth usage for a plurality of terminals. Moskowitz discloses nothing within the meaning of generating a communication fee data based on a ratio of the recorded communication band usage for the terminal to a total of the recorded band usage of all of the plurality of terminals.

The Examiner' states that Moskowitz, at paragraph 15, teaches a system "arranged to record a communication band usage for each of the terminals." Final Office Action at 4. The Examiner's statement is false. Moskowitz discusses, at paragraph 15 and elsewhere, a method to value and trade a right to future bandwidth usage at a specified priority. Valuing and trading rights to future bandwidth usage does *not* teach, disclose or constitute recording a quantity of data communicated by any user, much less by a terminal.

The Examiner states that Moskowitz discloses, at paragraph 78, a "convenience premium" and, at paragraph 86, that "the accounting of the bandwidth used should not exceed the value of the bandwidth provided." Advisory Action at 2. The Examiner's characterization of Moskowitz's "convenience premium" is false. Moskowitz's " convenience premium" is an economic term for what a user is willing to pay for the right to transfer, in the future, information within a specified time, over the cost to the network of performing the dynamic bandwidth allocation to meet those rights. It is not a fee for a past usage.

The Examiner's characterization of Moskowitz at paragraph 86 discussing "the *accounting of the bandwidth used* should not exceed the value of the bandwidth provided," is false. Moskowitz discusses a supply-and-demand costing, so that economics justify the cost to the user. This is not an "accounting" within the meaning alleged by the Examiner – namely a charge for past usage.

The Examiner's statement of: "at the time of the invention it was well-known that the bandwidth usage is often a component in the price charged to the customer," Advisory Action at 2, is false. The Examiner confuses bandwidth allocation with past bandwidth usage.
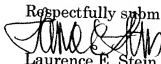
The Examiner states it would be obvious to price Moskowitz's convenience premium based on a ratio of the recorded communication band usage for the terminal to a total of the recorded band usage of all of the plurality of terminals, Advisory Action at 2-3. The Examiner's position is not consistent with Moskowitz or the other art. Moskowitz's "convenience premium" is an economic term, having nothing to do with charging for past use. Moskowitz's economic term of: "convenience premium" does not include *recording* a bandwidth usage for anyone - not for one terminal and not for a plurality of terminals. Nothing in the cited art suggests anything of charging individual users based on a ratio of quantities of recorded past communications.

The Examiner states that Moskowitz at paragraph 50 "disclosed assigning a price for the bandwidth usage." Advisory Action at 3. The Examiner's statement is false. Moskowitz at paragraph 50 discloses setting a price for a future bandwidth right.

The Examiner states that Moskowitz at paragraph 76 "disclosed estimating the bandwidth offered to users." Advisory Action at 3. If the Examiner's statement is intended to mean Moskowitz estimates a past bandwidth usage, the statement is false. Moskowitz at paragraph 76 discloses setting a price for a future bandwidth right.

Conclusion

In view of the foregoing, Applicant respectfully requests that claims 1, 7 and 9-17 be allowed and that the application be passed to issue.

Respectfully submitted,

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